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14 December 1973

MEMORANDUM FOR: Deputy Chief, Special Assistant,  
OER

SUBJECT : Law of the Sea Conference

Attached is the background paper on Law of the Sea,  
which you requested on behalf of

Attachment:  
As stated

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## Law of the Sea Conference

### Time and Place

The Third United Nations Conference on the Law of the Sea began in New York City on 3 December 1973 with the convening of a two week organizational session. This is to be followed by a 10 week substantive session in Caracas, Venezuela from 20 June to 29 August 1974. A subsequent session, if necessary, would be held in Vienna in 1975.

### Participants

All members of the United Nations have been invited plus 12 additional countries who hold membership in at least one of the standing U.N. international organizations. This latter group includes countries such as South Vietnam and South Korea. Although invited, North Vietnam has refused to attend, but the government proclaimed by the insurgents in Portuguese Guinea has sent a delegation.

### Substantive Issues

1. Territorial Sea - To define and legalize the breadth of the territorial sea, an area over which a coastal state has exclusive jurisdiction.

2. Coastal Seabed Economic Area (CSEA) -- To define and legalize that area beyond the territorial sea over which the coastal state has exclusive jurisdiction to explore and exploit the non-living resources.

3. Coastal State Jurisdiction Over Fishing Beyond the Territorial Sea - To define and legalize the extent of the coastal states' authority to regulate fishing for both anadromous and migratory species in the waters beyond the territorial seas.

4. Straits - To define and legalize the rights of passage to be enjoyed by both commercial and military vessels wishing to transit international straits. The same applies for transit over the straits by air.

5. Deep Seabed - To define and legalize an international regime and the necessary machinery for controlling access to the deep seabed, the sea area which is beyond national jurisdiction.

6. Land-Based, Seabed-Source and Vessel-Source Marine Pollution - To define and legalize standards and rules for national marine pollution control, and international pollution standards and rules for those sea areas beyond national jurisdiction.

7. Scientific Research - To define and legalize the rights and obligations of coastal states to engage in scientific research within their respective territorial seas, coastal seabed economic areas, and the deep seabeds as well as the rights and obligations of foreign nationals, institutions, and international organizations to operate within the same geographic area.

8. Dispute Settlement - To define and legalize a mechanism for effective compulsory settlement of disputes pertaining to the territorial sea, the coastal seabed economic area and the area encompassing the deep seabed.

#### Discussion

1. The Third United Nations Conference on the Law of the Sea will attempt to create new international rules to govern the 60% of the world's surface that lies below the sea. Not until the end of World War II was much thought given to the possession of the seabed beyond a nation's territorial sea, the outer boundary of which was generally accepted at three nautical miles. However, new technology dramatically opened the oceans to exploitation by the developed nations; i.e., the introduction of supertrawlers with onboard "fish factories", the successful use of deep-water drilling rigs for extracting oil and natural gas, and

more recently the possibility of mining the ocean floor to exploit the mineral wealth sprinkled across its surface. As a result, the question of access to and jurisdiction over the seabed has become an active issue, with the developed nations -- United States, Great Britain, and Russia -- generally opposed to any form of international law that would restrict mineral resource exploitation or hamper the traditional freedom of the seas. On the other hand, the developing nations view the seabed as a common heritage of mankind, the benefits of which should be shared by all in some as yet undetermined manner.

2. Although the United States still adheres to three nautical miles, many states now lay claim to a broader territorial sea, giving rise to the strong possibility that the Conference will establish a 12 nautical mile territorial sea. One immediate result would be the closing of most of the 35 navigable straits commonly used by the United States for its maritime trade, since by definition they would become territorial seas. Indonesia and Malaysia already are drawing up plans to claim what are at present the international waters of the Malacca straits while similar action could close the Straits of Gibraltar and

the English Channel. As a result the principal maritime states such as the United States and Russia are adamant that any treaty on a 12 mile territorial sea must include provisions for free passage through the straits. Conversely the straits states generally favor a policy of "innocent passage", defined as shipping not prejudicial to the peace, good order and security of the straits or coastal states. But the arbitrary nature of interpretation as to what is innocent makes this unacceptable to the maritime states.

3. In 1945 the United States, with an eye on the vast offshore oil and gas deposits, declared that it controlled the economic exploitation of the non-living resources within the area of the continental shelf. As for the living resources, namely fish, it was not until 1966 that the United States added a nine mile exclusive domestic fishing zone to the territorial sea boundary. Other coastal nations have not lagged in claiming exclusive jurisdiction to control and exploit the living and non-living resources in the waters beyond their territorial seas. The physical boundary of these so-called coastal seabed economic areas (contiguous zones, patrimonial seas, etc...) has not been universally

established, but the Conference will consider several alternatives: a 200 nautical mile economic zone; a zone stretching to the continental margin; a 40 nautical mile zone; or some combination of the above. Although the United States favors the establishment of a coastal seabed economic area, it qualifies its support by insisting that within such an area there be no interference with navigation, international communication cables and other activities that have traditionally enjoyed freedom in the high seas.

4. On fishing, the United States has emphasized the need to balance conservation with maximum utilization, since in a world faced with a protein shortage, a fish allowed to die of old age is a fish wasted. In addition, the United States does favor coastal state control over anadromous fish like salmon which are spawned in fresh water streams, migrate far out to sea and return to their place of origin to spawn. Management authority over the highly migratory species such as tuna, that roam widely over the world's oceans, could be placed in the hands of an international authority. The coastal developing states have favored broad national jurisdiction over all fishing. This at times has brought them into conflict with the distant-fishing states such as Great Britain, Japan, and Russia,



who are apprehensive over any infringement upon their traditional fishing grounds.

5. In reference to research and pollution, the developing states generally have adopted a parochial view that they alone under a "consent regime" should control research and set pollution standards within both their territorial seas and their coastal seabed economic areas. The developed nations generally have favored maximum freedom for scientific research in the oceans as well as the establishment of international nondiscriminatory pollution standards, the fear being that if pollution standards are not set internationally the less developed nations might arbitrarily seize upon pollution control as a pretext to harass shipping to their ports and in the waters beyond their territorial seas.

6. The area of the deep seabed, below 200 meters and beyond, is a blank in international law. The Conference will review various proposals for the establishment of some type of International Seabed Resource Authority (ISRA), charged with regulating the economic exploitation of the deep seabed. The degree of authority which an ISRA would possess is open to dispute, but the United States as well as other developed nations visualize a limited role confined generally to granting permits to and receiving royalties from commercial

companies, royalties which would be distributed globally and in particular to the developing nations. The terms of licensing and the royalty fees would be clearly stated in any treaty to eliminate the possibilities of discriminatory and unpredictable licensing and royalty policies. The United States also insists on including guarantees to protect foreign investment, compulsory dispute settlement by an "unbiased" tribunal, and no unreasonable interference with other uses of the sea.

7. Although significant differences exist over organization and powers, the time for an ISRA would appear to be at hand if indeed one is ever to be established. Already several governments and as many as 30 companies, led by Summa Corporation, a privately held concern of Howard Hughes, are mining the international seabed, albeit in a very limited quantity. At least three of the companies could be in commercial production before the decade is out, each extracting daily approximately 10,000 tons of nodules containing manganese, copper, nickel, and cobalt. As a result, by the end of the decade minerals will have joined the ranks of food and oil as the third major resource man has won from the sea.